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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION**

**CONCERNED FRIENDS OF THE WINEMA,
KLAMATH-SISKIYOU WILDLANDS CENTER,
WESTERN WATERSHEDS PROJECT,
OREGON WILD, and CENTER FOR
BIOLOGICAL DIVERSITY,**

Plaintiffs,

v.

**U.S. FOREST SERVICE, and U.S. FISH AND
WILDLIFE SERVICE,**

Defendants,

and

**IVERSON MANAGEMENT LIMITED
PARTNERSHIP,**

Defendant-Intervenor.

Case No. 1:14-cv-737-CL

**PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND
COSTS**

Plaintiffs Concerned Friends of the Winema, Klamath Siskiyou Wildlands Center, Western Watersheds Project, Oregon Wild, and Center for Biological Diversity respectfully move this Court for an award of reasonable attorneys' fees and litigation expenses that they have incurred to date in their successful prosecution of this matter against the U.S. Forest Service and U.S. Fish and Wildlife Service.

The Court is authorized to award Plaintiffs their reasonable attorneys' fees and litigation expenses against Defendant U.S. Forest Service in this case pursuant to the Equal Access to Justice Act (EAJA) and the Endangered Species Act (ESA). EAJA provides:

Except as otherwise specifically provided by statute, a court shall award to the prevailing party other than the United States fees and other expenses . . . incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). The ESA allows recovery of fees "whenever the court determines that such award is appropriate." 16 U.S.C. § 1540(g)(4). Under this provision, fees may be appropriate when a plaintiff has achieved some success and its lawsuit was a catalyst in achieving that success even if there was no judicial decision on the ESA claim. *Association of California Water Agencies v. Evans*, 386 F.3d 879, 884 (9th Cir. 2004).

Plaintiffs are entitled to recovery of reasonable attorneys' fees and litigation expenses incurred in this matter under EAJA because Plaintiffs are eligible parties as defined under EAJA; they are the prevailing parties in this litigation, including by having the Court issue an Order adopting the Findings and Recommendation of Judge Clarke granting summary judgment to Plaintiffs on their National Forest Management Act and ESA claims and ordering injunctive relief; there are no special circumstances that would make an award unjust; and Defendants'

position was not substantially justified. Plaintiffs are also entitled to an award of fees under the ESA for work resulting in an agreement from the Forest Service that satisfied Plaintiffs' initial ESA claim.

Plaintiffs request an award of attorneys' fees and litigation costs incurred to date in their successful prosecution of this litigation, based on the "lodestar" approach for fees (i.e., the reasonable time expended by their counsel at the reasonable market rates) and based on the actual litigation expenses incurred. Ms. Rule seeks hourly rates of between \$370 and \$415 for the years 2014-2017, Ms. Potter seeks hourly rates of \$290 and \$305 for the years 2015-2017, and Ms. Brumfield seeks an hourly rate of \$190 for work in 2014-2015. Litigation expenses include the filing fee, postage, and travel between Portland and Medford for a court hearing. The total fees sought by each of Plaintiffs' counsel is set forth below (*see also* Exhibit 1, attached hereto):

Attorney Fees and Costs

Lauren Rule:	\$294,007.00
Elizabeth Potter:	\$49,024.50
Olivia Brumfield:	\$54,699.00
 Litigation Expenses:	 \$ 933.20
Total fees and expenses:	\$398,663.70 ¹

Plaintiffs and Defendants are currently negotiating in good faith to attempt to settle the issue of attorney fees and litigation expenses. However, to insure the timely filing of this motion, Plaintiffs file it now and will provide further briefing, declarations, timesheets and other documents in support of this motion at a later time if negotiations fail. Specifically, Plaintiffs are filing the accompanying motion to stay the briefing on this matter until January 19, 2018 in order

¹ If settlement negotiations are unsuccessful to resolve this fee claim, Plaintiffs reserve the right to seek additional fees to cover further time and costs for litigating this issue.

to try to reach settlement and avoid litigating this matter. *See* Plaintiffs' Unopposed Motion to Stay Motion for Attorneys' Fees and Costs (filed concurrently).

WHEREFORE, Plaintiffs respectfully pray that the Court grant this motion; and award them attorneys' fees and litigation expenses in the amount of \$398,663.70 for the fees and expenses they have reasonably incurred to date in this action.

Dated: October 19, 2017

Respectfully submitted,

s/Lauren M. Rule

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